

<b>Comments Template on EIOPA-CP13/006a and EIOPA-CP 13/006b Consultation Paper on the Proposal for Guidelines on Complaints-Handling by Insurance Intermediaries and Draft Report on Best Practices by Insurance Intermediaries in handling complaints</b>		<b>Deadline 28 June2013 12:00 CET</b>
Company name:	BIPAR (European Federation of Insurance Intermediaries)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Public
<p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do <b>not</b> change the numbering in column "Reference", or any other formatting in the file.</u></li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>. Please do not delete rows in the table.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> <li>○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.</li> <li>○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment relating to the corresponding paragraph.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-13-006@eiopa.europa.eu">CP-13-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p> <p>The paragraph numbers and questions below correspond to document no. EIOPA-CP-13/006a. There is an additional section at the end of the table for general comments on the draft Best Practices Report (document no.EIOPA-CP-13/006b).</p>		

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<b>Reference</b>	<b>Comment</b>
General Comment	<p>BIPAR welcomes the opportunity provided by EIOPA to comment on the EIOPA Proposal for guidelines on complaints handling by insurance intermediaries and on EIOPA’s draft report on best practices by insurance intermediaries in handling complaints.</p> <p>BIPAR supports initiatives aimed at reinforcing consumer confidence and protection across the European Union. Effective internal complaints handling is critical for the confidence and protection of consumers. Effective internal complaints handling is critical for intermediaries in their relations with their clients. BIPAR believes that it should be regarded as a high priority for the insurance sector.</p> <p>BIPAR generally supports the guidelines proposed by EIOPA. It notes that most of the existing national requirements for the complaints process are aligned with the EIOPA proposed guidelines. In Ireland for example, the Consumer Protection Code outlines the complaints process that intermediaries (indeed all regulated entities) must adhere to. The intermediary is required to endeavour to resolve the complaint and where it is not possible the complaint is then referred to the Financial Services Ombudsman who will investigate the complaint and issue a finding.</p> <p>BIPAR agrees with the scope chosen by EIOPA for the draft Guidelines. It is important that it <u>covers and promotes internal</u> complaints-handling procedures for insurance intermediaries. Internal procedures are efficient and ensure consumer protection and confidence. It is essential that each intermediary firm has the ability to deal with a complaint internally <u>before</u> it is referred to ADR. This is an important principle. As explained in the Impact Assessment, point 4, internal procedures also help intermediaries contribute to averting reputational damage.</p> <p>BIPAR is however not convinced about the timing and the need for EIOPA guidelines on complaints handling by insurance intermediaries. Besides BIPAR would wish to raise its concerns over the lack of proportionality of these guidelines.</p> <p><b>Right timing?</b> BIPAR wonders about the timing of the publication of the Guidelines for intermediaries. EIOPA has</p>

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cited various recitals and articles of the Insurance Mediation Directive as one of the base for these guidelines, and in particular Recital 11, Articles 2.3, 10 and 11. In point 8 of the introduction of the Guidelines it is explained that the draft Guidelines apply to complaints relating to natural and legal persons which carry out the activity of "insurance mediation" as defined by Article 2.3 of the IMD. The IMD is however currently being revised and a European Commission proposal is being discussed by the European Parliament and the Council of the EU. That proposal has a wider scope and different definitions than the ones of the current IMD. Once the IMD II adopted the IMD will be repealed. We believe that the draft Guidelines should reflect that situation and that their publication should be delayed accordingly to ensure coherence with the EU legislative developments.

**A need for guidelines?**

There exist complaints-handling procedures for complaints addressed to insurance intermediaries in most EU Member States, some procedures are internal procedures for intermediaries (see attached for example documents on the French situation: ACP's recommendation and AGEA's template for internal procedures), some are external procedures (ex: complaints addressed to insurance intermediaries handled by insurers, ADR schemes etc..). Based on information received from its member associations, it appears that most of these procedures are working well for consumers.

This is confirmed in part II of the EIOPA Impact Assessment, where it is explained that most member states are not aware of special issues concerning the handling of complaints related to insurance intermediaries.

It is explained in EIOPA's Impact assessment that, because the IMDI is based on minimum harmonisation, Article 10 on complaints was implemented in a very wide variety of different regulatory solutions at national level, having thus generated a "regulatory failure" at EU level and this leading to different supervisory approaches and regulatory arbitrage. However no concrete examples of failures are given in the Impact Assessment. BIPAR believes that these are matters of objective assessment and the Impact Assessment should be more evidence-based.

**No proportionate regime**

BIPAR welcomes the fact that EIOPA decided to draw up different guidelines for each type of players

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in the insurance sector, intermediaries and insurers. As stated in our comments on the EIOPA draft guidelines on complaints handling by insurance undertakings, a comprehensive regime (covering both insurers and intermediaries) would not have allowed to take into account the specificities of each type of insurance market participants. We further explained that this would have created important and heavy burdens that would neither be proportionate to the risks and size of insurance intermediaries - being mainly small and medium-sized enterprises - nor to the number of complaints received by intermediaries.

In its press release and in point 7 (introduction) of its draft guidelines, EIOPA respectively explained that it has paid particular attention to the very diverse nature and size of the insurance intermediation market in Europe and that "*competent authorities should ensure a proportionate regime when applying these guidelines that takes into account the nature and size of insurance intermediaries*". References to the need for a proportionate regime and examples of it are also included in the draft Best Practices report.

BIPAR regrets that the need for a proportionate regime for intermediaries (who are mainly SMEs - especially sole traders) is not reflected in the text itself of the eight draft guidelines and would wish to raise its concerns over their lack of proportionality.

As illustrated by the document entitled "*Comparison of two sets of Guidelines and Best Practices Reports on Complaints Handling by Insurance Undertakings and Insurance Intermediaries*", the two sets of guidelines for insurers and intermediaries are similar (except for guideline 1) and none of the guidelines for intermediaries includes a single reference to the need of a proportionate regime. Such reference is only included in the point 7 of the Introduction of the draft guidelines and in the draft Best Practices report which are not subject to the "comply or explain" procedure. It is also interesting to note that the same point 7 is excluded from the scope of EIOPA Impact Assessment on these guidelines.

BIPAR understands the need for consistency and compatibility between both complaints handling systems for supervisory reasons but believes that intermediaries, mainly because of the size of most of them, can not structure and organise their internal complaints handling procedures in a similar way to insurers. BIPAR proposes that one of the following sentences - as included in the draft report on Best Practices - are included in guidelines 2 to 8: "**taking into account the nature**

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	<p><i>and size of insurance intermediaries in light of the principle of proportionality” or “depending on the size and structure of the intermediary”.</i></p> <p>For example Guideline 3 on Complaints management function could read as follows:  <b>“Taking into account the nature and size of insurance intermediaries in light of the principle of proportionality, competent authorities should ensure that insurance intermediaries have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated”.</b></p>	
1.	See general comments on the right timing	
2.	It is unclear how EIOPA would guarantee, via the “comply or complain” procedure, that national supervisors would enforce the guidelines in a similar manner.	
3.		
4.		
5.	<p>The IMD recast proposal includes a new article 7 that addresses a new division of competence between home and host member state supervisors, covering new Article 12 on complaints. BIPAR believes that this should be taken into account in the Guidelines.</p> <p>+See general comments on the right timing.</p>	
6.	BIPAR believes that for legal certainty, more clarity from EIOPA around Comply or Explain rules would be helpful.	
7.	See general comments on the need for a proportionate regime	
8.	Point 8 of the introduction deals with the scope of the guidelines. It should be reflected in the text of the Guidelines.	

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9.	These definitions should be reflected in the text of the Guidelines.	
10.	<p>Under point 10, it is explained that the Guidelines <u>do not apply</u> in two specific cases (where the intermediary receives a complaint about <u>a non-insurance activity</u>, and where <u>the intermediary handles a complaint on behalf of another financial institution</u>). However these two cases are not reflected at all in the same way in Guideline 1. It is confusing.</p> <p>BIPAR believes more clarity is needed regarding the scope of the Guidelines. It is crucial that the definition of a "complaint addressed to an intermediary" is clearly defined, otherwise the obligations introduced by the Guidelines would not achieve their aim. BIPAR believes that is necessary to (re)draft another guideline in this respect.</p>	
11.	See above comments	
12.	There are very useful references to the need for a proportionate regime and examples of it in the draft Best Practices report. BIPAR regrets however that this is not reflected in the eight guidelines which are the only text subject to the "comply or explain" mechanism.	
13.	<p>Guideline 1 deals with the complaints that are excluded from the scope of the Guidelines. Guideline 1 does not reflect the explanations given under point 10. BIPAR believes more clarity is needed regarding the scope of the Guidelines.</p> <p>Guideline 1 excludes from the scope of EIOPA guidelines, complaints received by an insurance intermediary "<i>for which another insurance entity is responsible and where the intermediary does not handle the complaint on behalf of that entity</i>".</p> <p>BIPAR does not understand the reasons of the exemption nor does it agree with it. It does not reflect the reality of many national situations where intermediaries "<i>for which another insurance entity is</i></p>	

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	<p><i>responsible and who do not handle the complaint on behalf of that entity" <u>do or can</u> handle complaints addressed to them – when relating to their activity - internally (see French example attached).</i></p> <p>This is a key principle for them. As explained above, internal procedures, for all intermediaries, brokers or agents, are efficient and ensure consumer protection and confidence. It is essential that each intermediary firm has the ability to deal with a complaint internally <u>before</u> it is referred to ADR or anyother system. This is an important principle. As explained on page 17 of the Imapct Assesement <i>"internal procedures help intermediaries become more aware of their duties and contribute to averting reputational damage. Sound market conduct by intermediaries also generate helps to enhance consumer confidence and contributes indirectly to reinforcing confidence in the insurance sector"</i>.</p> <p>In other markets where intermediaries ,<i>"for which another insurance entity is responsible and who do not handle the complaint on behalf of that entity"</i>, do not or can't handle complaints internally, there is a strong wish to be able to do so for the reasons explained above.</p> <p>BIPAR believes therefore that more flexibility should be given in the Guidelines regarding complaints addressed to intermediaries <i>"for which another insurance entity is responsible"</i>. These latter should be given the choice to be able to deal with a complaint internally and this should be reflected in Guideline 1 accordingly.</p>	
14.	See above comments.	
15.	Competent authorities should respect the principle of proportionality. This principle should be clearly reflected in the guidelines. The majority of intermediaries are small enterprises (one-man businesses or offices with 2 to 5 employees). In this context, it is very important that one tries to obtain an optimal balance between the real contribution to consumer protection on the one hand and obligations required from intermediaries on the other hand. The administrative feasibility and the extra costs of such obligations should totally reflect the profile of the intermediary.	

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	BIPAR proposes that the following sentences - as included in the draft report on Best Practices - are included in guidelines 2 to 8: « <i>taking into account the nature and size of insurance intermediaries in light of the principle of proportionality</i> ” or “ <i>depending on the size and structure of the intermediary</i> ”.	
16.	See above. BIPAR believes that it is important that this principle is not impeded and that insurance intermediaries can organise their internal functions in an appropriate fashion.	
17.	See comments on 15. The cost of the introduction of a possible electronic online secure register should be further assessed, particularly for small to medium sized intermediaries as it is thought that it would not be in proportion with the benefits of introducing such a system.	
18.	See comments on 15. BIPAR believes that guideline 5 regarding reporting could prove to be administrative burdensome for intermediaries without adding any value to the supervision of national competent authorities.	
19.	See comments on 15	
20.	See comments on 15	
21.	See comments on 15	
22.	In order to enable a smooth implementation of the guidelines for the industry, a transitional period should be introduced in the guidelines. BIPAR believes that for legal certainty more clarity from EIOPA around Comply or Explain rules would be helpful.	
23.	BIPAR believes that for legal certainty, more clarity from EIOPA around Comply or Explain rules would be helpful, in particular regarding their interaction with national legislations or existing supervisors’ guidelines	



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24.	BIPAR believes that for legal certainty, more clarity from EIOPA around Comply or Explain rules would be helpful, in particular regarding any form of conflict or contradiction between EIOPA guidelines and national legislation.	
25.	BIPAR believes that for legal certainty, more clarity from EIOPA around Comply or Explain rules would be helpful. For example what would be the consequences of a non compliance by a competent authorities if any?	
26.	BIPAR believes that any review by EIOPA should be consistent with similar reviews scheduled in the IMD recast proposal.	
Q1. - on Impact Assessment	BIPAR believes that there should be a right balance between the costs of the implementation of the draft guidelines and the benefits gained by consumers. With regard to possible positive impacts to flow from the introduction of the Complaints Handling Guidelines, BIPAR expects the introduction of complaints handling process proportionate to the risks and the size of intermediaries and also to the number of complaints received by intermediaries.	
Q2a. - on Impact Assessment	(see general comments)	
Q2b. - on Impact Assessment	(see general comments)	
Q2c. - on Impact Assessment	(see general comments)	
Q2d. - on Impact Assessment	(see general comments)	
Q3. - on Impact Assessment	As stated above, it is important that EIOPA guidelines are proportionate to the risks and the size of intermediaries, and also to the number of complaints received by intermediaries. Each complaint is different. It is important that EIOPA guidelines do not lead to a too strict and rigid system.	

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	<p>The aim of EIOPA guidelines is to ensure that complaints are registered and handled and in the failure of a dialogue, to make sure that the consumer is informed of other means of redress (ombudsman, ADR etc...). In this context we believe that it is important that other EU Directives are taken into consideration, in particular the Directive on ADR and on on-line disputes that are to be adopted by the EU legislators.</p> <p>BIPAR does not believe that significant costs will have to be incurred by NCAs as a result of the adoption of the Guidelines as inferred under Option 1, section h) of the Impact Assessment in Annex I of the Consultation Paper. Any costs associated with the additional supervision required following the implementation of a system of complaints handling for intermediaries should be "marginal". If costs should not be marginal, it would be not acceptable that they are borne by both the industry and/or the consumers.</p> <p>In the Impact Assessment (OPiton option? 1, e)), it is explained that "<i>EIOPA opted not to refer to the categories of insurance intermediaries set out in IMD 1, notably tied agents, in order to adjust to the different national market structures.</i>" BIPAR agrees with this approach, but would like to underline that the IMD 1 is an activity based text and that it refers only to two categories of intermediaries: insurance intermediaries and tied intermediaries. Tied agents are not referred to in the IMD1.</p>	
<p>Best Practices Report Comments(EIOPA-CP-13/006b)</p>	<p>We wonder if (best) practices is a good term. Who is deciding what is good, better or best, how are these (best) practices developed?</p> <p>There are very useful references to the need for a proportionate regime and examples of it in the draft Best Practices report. BIPAR regrets however that this is not reflected in the eight guidelines which are the only text subject to the "comply or explain" mechanism.</p>	